

GJMH010016112021



Presented on	16.06.2021
Registered on	16.06.2021
Decided on	30.06.2026
Duration Y-M-D	05-00-14
Exh.	24

**IN THE COURT OF PRINCIPAL DISTRICT JUDGE
MAHESANA**

[BEFORE A.L.VYAS]

REGULAR CIVIL APPEAL NO.44 OF 2021

APPELLANTS (ORIG. PLAINTIFFS):-

1. Pathan Shakinaben Rustomkhan
Aged about 61 years, Occupation: Housework,
At present residing at: Sukun Society,
Nr. Shalimar Society, Shobhasan Road,
Tal. & Dist. Mahesana.
2. Pathan Noorbibi Rustomkhan
Aged about 58 years, Occupation: Housework.
3. Pathan Jetunbibi Rustomkhan
Aged about 57 years, Occupation: Housework.
Nos.2 & 3 residing at: Shahalam, Nagori Chali,
Opp. Nawabkhan's Bungalow, Ahmedabad.
4. Heirs of deceased Ashrafkhan Rustomkhan
4/1 Sayrabanu Ashrafkhan Pathan

Principal District Judge,
Mahesana.

Aged about 52 years, Occupation: Housework.

- 4/2 Samirkhan Ashrafkhan Pathan
Aged about 33 years, Occupation: Business.
- 4/3 Allarakha Ashrafkhan Pathan
Aged about 31 years, Occupation: Business.
- 4/4 Mahammadrafik Ashrafkhan Pathan
Aged about 29 years, Occupation: Business.
- 4/5 Yasminbanu Ashrafkhan Pathan
Aged about 35 years, Occupation: Housework.
- 4/6 Parvinbanu Ashrafkhan Pathan
Aged about 25 years, Occupation: Housework.

Nos.4/1 to 4/6 residing at: Haidri chowk, Khatki Wado, Tal. & Dist. Mahesana.

5. Pathan Jarinabibi Rustomkhan
Adult, residing at: Kadi, Tal. Kadi.
6. Pathan Sherbanu Rustomkhan
Adult, R/o. Kheralu, Tal. Kheralu, Dist. Mahesana.
7. Pathan Mahemoodkhan Rustomkhan
Aged about 52 years, Occupation: Business,
R/o. Haidri Chowk, Khatkiwado, Mahesana.
8. Pathan Najmabanu Rustomkhan
Adult, residing at: Kadi, Tal. Kadi.
9. Pathan Samsherkhan Jivannkhan, since deceased
through his heir & administrator
Navrangkhan Samsherkhan Pathan
Aged about 50 years, Occupation: Business,
R/o. Haidri chowk, Tal. & Dist. Mahesana.

VERSUS**RESPONDENT (ORIG. DEFENDANT):-**

1. Heirs of deceased Patel Shankarbhai Bajidas
 - 1/1 Patel Bhikhabhai Shankarbhai
 - 1/2 Patel Chandubhai Shankarbhai

2. Heirs of deceased Patel Ramabhai Umedbhai
(Amendment carried out in respect of order
passed below Exh.11)
 - 2/1 Heirs of deceased Joitaram Ramabhai
 - 2/1/1 Patel Manguben Wd/o. Joitaram Ramdas
Aged about 63 years, Occupation: Housework,
R/o. Fatepura, Tal. & Dist. Mahesana.
 - 2/1/2 Patel Jayeshbhai Joitaram
Aged about 44 years, Occupation: Business,
R/o. Fatepura, Tal. & Dist. Mahesana.
 - 2/1/3 Patel Chandrikaben Joitaram
C/o. Ravikumar Babulal
Aged about 38 years, Occupation: Housework,
At present residing at: Ranela, Tal. Bahucharaji.
 - 2/1/4 Patel Ashaben Joitaram
C/o. Patel Rajivankumar Ambalal
Aged about 34 years, Occupation: Housework,
R/o. Karshanpura, Tal. & Dist. Mahesana.
 - 2/2 Patel Hirabhai Ramabhai
 - 2/3 Patel Jayantibhai Ramabhai, since deceased through
his legal heirs.
 - 2/3/1 Patel Kapilaben Wd/o. Jayantibhai Rambhai
Aged about 59 years, Occupation: Housework,
R/o. Fatepura, Tal. & Dist. Mahesana.

- 2/3/2 Patel Atulbhai Jayantibhai
Aged about 31 years, Occupation: Agriculture,
R/o. Fatepura, Tal. & Dist. Mahesana.
- 2/3/3 Patel Parulben Jayantibhai
C/o. Patel Chandrakant Joitaram
Aged about 35 years, Occupation: Housework,
R/o. Laxmipura (Upalva), Tal. Unjha.
- 2/3/4 Patel Dimpleben Jayantibhai
Aged about 33 years, Occupation: Housework,
C/o. Patel Krunal Arvindbhai Ramabhai
At present residing at: Chanasma, Kotvadiyu
Paru, Kotvadiya, Tal. Chanasma, Dist. Patan.
- 2/4 Patel Shantaben Ramabhai
- 2/5 Patel Kamuben Ramabhai
- 2/6 Patel Taraben Ramabhai
All Adult, Occupation: Agriculture,
All R/o. Palodar, Peta Paru, Fatepura,
Tal. & Dist. Mahesana.

SUBJECT:- APPEAL UNDER SECTION 96 OF THE CIVIL
PROCEDURE CODE, 1908.

APPEARANCE:-

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Mr. S. J. Saiyed, Learned Advocate for appellants.
Mr. S.S. Patel, Learned Advocate for respondents.

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JUDGMENT

1. The appellants have preferred present appeal u/s.96 of the Code of Civil Procedure, 1908 against the judgment and

Principal District Judge,
Mahesana.

decree dated 03/04/2021 passed by the learned 6th Additional Senior Civil Judge, Mahesana in Regular Civil Suit No.77 of 2007.

2. The appellants herein are the original plaintiffs and the respondents are the original defendants before learned Trial Court. For the sake of brevity and convenience, the parties hereinafter are referred to as in this judgment as per their original status before the trial court. The Code of Civil Procedure, 1908 is hereinafter be referred to as “Code”.

3. The facts leading to the Suit, in nut-shell, as under:-

The plaintiffs are the legal heirs of deceased Rustomkhan Jivankhan. The plaintiffs have their ancestral land bearing Block No.29 (Old Block No.23) (New Survey No.26) of Mouje: Ramosan, situated in the sim of Tal. Mahesana admeasuring Acre 2-36 (hereinafter referred to as suit land). The suit land came to be given on mortgage by the grandmother of plaintiffs Gotalu Wd/o. Hathibhai Janbhai and Pathan Rustomkhan Jivankhan to the defendant No.1 – deceased patel Shankarbhai Bajidas and defendant No.2 – deceased Patel Ramabhai Umedbhai by executing Deed of Mortgage of Rs.1100/- for which mutation Entry No.301 came to be mutated in the revenue record. Thus, the plaintiffs have their inheritance rights over the suit land. The defendants are in possession of the suit land. The plaintiffs have perform their part of contract of mortgaged

deed. As such, the plaintiffs want to release the mortgaged suit property from the defendants, they have orally informed the defendants, but the defendants didn't response positively and not handed over the possession of the suit property to the plaintiffs, and therefore, the plaintiffs have issued Notice through Regd. Post A.D. and U.P.C. to the defendants. The said notice served upon the defendants, but the defendants failed to reply the said notice, and therefore, present suit has been filed and sought relief as prayed for in Para. 10 of the Suit.

4. The defendant duly served with the Summons / Notice issued by the learned Trial Court. The defendant appeared and filed their Written Statement vide Exh.8 and denied the contentions raised and allegations made by the plaintiffs against the defendants in the Suit. The defendants have contended that the plaintiffs have not averred true and facts in the Suit. The defendants have mainly contended that elders of defendants have obtained the suit land by executing registered deed of mortgage and entry thereof has also been mutated in the revenue record. The period of releasing mortgaged suit land had been fixed for 11 years. The defendants are in possession of the suit land since 1946. It has been further submitted that on 03/06/1959, the suit land was sold by the elders of the plaintiffs to the elders of defendants by executing registered sale deed at consideration of Rs.1500/-, and

therefore, there is no question to release the suit land from mortgage. Thus, the suit of the plaintiffs is barred by law of limitation. The plaintiffs have suppressed the material fact before the Hon'ble Court, and therefore also, the suit of the plaintiffs is not tenable and required to be dismissed with cost.

5. The plaintiffs have filed their counter affidavit vide Exh.14 to the Written Statement filed by the defendants denying the facts stated in the said Written Statement and reiterated the facts stated in the suit.
6. After considering and evaluating the documents available on record as well as considering the rival arguments canvassed by both the parties, learned Trial Court was pleased to dismiss the suit of the plaintiffs with cost.
7. Being aggrieved by and dissatisfied with the judgment and decree dated 03/04/2021 passed by the learned 6th Additional Senior Civil Judge, Mahesana in Regular Civil Suit No.77 of 2007, present appeal preferred by the appellants on the grounds and facts stated in the memo of the appeal.
8. Heard oral arguments canvassed by learned Advocates appearing on behalf of the parties.
9. Considering the appeal memo, record and proceedings of suit proceedings and oral arguments canvassed by learned Advocates for the parties, the following points arise for my determination of this appeal:-

POINTS

- 1) Whether appellants prove that learned Trial Court has erred in coming to the conclusion that, plaintiffs are not entitled to release the mortgaged suit land by performing their part of contract of deed of mortgage from the defendants?
- 2) Whether appellants prove that learned Trial Court has erred in coming to the conclusion that, plaintiffs are not entitled to get agriculture produce from the suit land from the date of filing of the suit till the date of taking over the possession?
- 3) Whether appellants prove that learned Trial Court has erred in coming to the conclusion that, the suit of the plaintiffs is barred by law of limitation?
- 4) Whether appellants prove that learned Trial Court has erred in coming to the conclusion that, the elders of defendants have purchased the suit land by executing registered sale deed in the year 1959 at consideration of Rs.1500/-.
- 5) Whether appellants prove that learned Trial Court has erred in coming to the conclusion

that, plaintiffs are not entitled to get relief as sought for in the Suit.

6) What order and decree?

10. My findings to the above said points is as under:

1. Point No.1 : In negative.
2. Point No.2 : In negative.
3. Point No.3 : In negative.
4. Point No.4 : In negative.
5. Point No.5 : In negative.
6. Point No.6 : As per final order.

REASONS

Point Nos. 1 to 5:-

11. I have heard learned advocates appearing on behalf of respective parties and have gone through the original record and proceedings of the Suit along with the evidence produced therein as well as the impugned judgment and decree.
12. It is pertinent to note hereby that the present appeal is the first regular civil appeal against the decree. Therefore, according to the judgments reported in **2011 (2) G.L.H. 432 (S.C.)** in the case of **B. M. Narayana Gowda V/s Shanthamma**, it is settled by the Hon'ble Supreme Court that *the first appeal is a valuable right of the appellant and therein all questions of fact and law decided by the Trial Court are open for reconsideration. In first appeal,*

the court needs to decide questions of fact and law comprehensively by giving full dressed hearing.

13. *It is settled by **the Hon'ble Supreme Court** that it is the duty of the Appellate Court to deal with all issues and evidence led by the parties before recording findings. Thus according to the principles, settled by the above cited judgments by the appellant, this first Appellate Court should re-appreciate the evidence and materials on records.*
14. Now, this is the first appeal therefore, this court has to re-appreciate the evidence on record. In the case of **Laliteshwar Prasad Singh & Ors. Vs. S.P.Shrivastave reported in 2016 Scale 902**, Hon'ble Supreme Court held that, *"when the appellate court concurrence with the finding and reasons of the learned trial court, the appellate court does not need to re-write the reasons"*.
15. On reappreciating the oral evidence of plaintiff No.7 produced vide Exh.51, wherein the plaintiff has reiterated the facts stated in the suit as well as in his counter affidavit. Learned Advocate for the defendants has cross-examined the said plaintiff, wherein he has admitted that the suit has been filed on the basis of power of attorney, but they have not produced the power of attorney. The plaintiff has also admitted the fact of revocation of power of attorney and publication of notice in respect thereof. The plaintiff has admitted that on 30/06/1946, the elders of

plaintiffs have executed deed of mortgage in favour of elders of defendants Shankar Baji and Patel Rama Umed at consideration of Rs.1,100/-. The plaintiff has also admitted the period of expiry of 11 years for releasing the mortgaged property. The plaintiffs have filed the suit for releasing the mortgaged suit land from the defendants. The plaintiffs have further contended that said mortgage was created on 04/10/1951 and deed was executed on 07/09/1957. However, the plaintiff has not produced any documentary evidence in support of such contention. The plaintiffs have relied upon the document produced vide Exh.43 showing entry that defendants Shankar Baji and Rama Umed have their right title in lieu of mortgage. However, the plaintiffs failed to establish that from where they have obtained the said document. Moreover, the plaintiffs have not examined any independent witness to prove the contents of the said document produced vide Exh.43. It also appears that the said document Exh.43 is without signature of authorized signatory and without seal of competent authority, and therefore, the said document is not required to be reliable.

16. On reappreciating the oral evidence of defendant produced vide Exh.61 along with the documents produced therewith, it appears that defendants have produced notarized copy of deed of mortgage vide Exh.54. The said document Exh.54 was registered document registered on 30/12/1946. On

reappreciating the document produced Exh.54, it is established that the elders of plaintiffs have mortgaged the suit property with elders of defendants for a period of 11 years at consideration of Rs.1,100/-. The plaintiffs have not challenged the said document Exh.54. Moreover, the plaintiff No.7 has admitted the fact of said document in his cross-examination. Thus, it appears that the period of releasing mortgage was 11 years from the date of execution of deed of mortgage on 30/12/1946. Moreover, the plaintiffs failed to prove that they have and had ready and willing to perform their part of contract to release the mortgaged property within period of 11 years from the date of execution of deed of mortgage and also failed to establish that they were and are ready and willing to pay amount of mortgage. As such the plaintiffs failed to prove that they are entitled to get possession of the suit land, the plaintiffs are not entitled to get produce from the suit land, and therefore, learned Trial Court has rightly concluded Issue Nos.1 & 2 in negative. On reappreciating the document produced at Exh.54, it is proved that the elders of plaintiffs have mortgaged the suit land on 30/12/1946 for a period of 11 years with the elders of the defendants, which is admitted by the plaintiffs. Thus, considering the provisions of Article 61(a) of the Limitation Act, a mortgagor has a time limit of 30 years to file a suit against a mortgagee to redeem a mortgage or to recover

possession of immovable property. As agreed by the plaintiffs that deed of mortgage executed on 30/12/1946 for a period of 11 years and the said period of redemption of suit expired on 31/12/1957 and the plaintiffs have filed the Suit on 21/03/2007, which shows that the suit of the plaintiffs is barred by law of limitation.

17. On reappreciating the document Exh.55, which is notarized document produced by the defendants, it reveals that the same was registered vide Sr. No.472 dated 03/06/1959 in the office of Sub-Registrar, Mahesana. However, the defendants have not examined any witness to prove the said document. Moreover, the plaintiffs have not resisted the application Exh.53 to exhibit the said document. The said document Exh.55 produced from the custody of the defendants and the same was certified by the registered Notary Public. The defendants in their reply Exh.47 to the Notice issued by the plaintiffs, have averred the fact of execution of sale deed, which is not challenged by the plaintiffs in the suit, and therefore, there is no reason to disbelieve the said document. It appears from the said document Exh.55 that the father of plaintiffs Rustomkhan Jivankhan and Bai Gotabu Wd/o. Jivankhan Rustomkhan have executed the said document in favour of father of plaintiffs at consideration of Rs.1,500/- and got registered with competent authority. Thus, it is proved that the father of defendants have purchased the suit land from

its owner by executing registered sale deed. Thus, defendants have proved that their elders have purchased the suit land from the elders of plaintiffs by executing registered sale deed in the year 1959 for a consideration of Rs.1,500/-. In view of the above facts and circumstances of the case, the plaintiffs are not entitled to get relief as sought for in the Suit. The learned Trial Judge has rightly recorded the reasons and given findings in accordance with the law. Thus, I am fully agree with the reasons recorded and findings given by the learned Trial Court and there is no such legal reason shown in the present appeal and arguments canvassed by the learned Advocate for the appellants. Thus, plaintiffs miserably failed to prove that they are entitled to get relief as sought for in the suit. As per the settled principle of law unless and until gross illegality or perversity is committed by the Trial Court by passing any order, the Appellate Court shall not interfere in the order. As discussed above, there is no perversity or illegality is committed by the Trial Court in passing the judgment and decree. In view of the above discussion, this Court answers Issues Nos.1 to 5 in negative accordingly.

POINT No.6 :-

18. In view of the above discussions, findings arrived at, reasons recorded and observations made above, the present appeal is not required to be interfered. To decide Issue

No.6, I, do hereby pass the following final order in the interest of justice.

ORDER

1. Present Regular Civil Appeal is hereby dismissed.
2. The judgment and decree dated 03/04/2021 passed by the learned 6th Additional Senior Civil Judge, Mahesana in Regular Civil Suit No.77 of 2007 is hereby confirmed and upheld.
3. No order as to costs.
4. Decree to be drawn accordingly.
5. R & P be sent back to the concerned Ld. Trial Court.

Signed and pronounced in the open Court on this 30th day of June, 2026 at Mahesana.

Date : 30.06.2026.
Place: Mahesana.

(Ambrish Laljibhai Vyas)
Principal District Judge,
Mahesana.
Code No.GJ00508.

Principal District Judge,
Mahesana.